IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.2200 OF 2007

Juzar Ali Hussain Vakharia ..Applicant.

Vs.

The Union of India ..Respondent.

Mr Uday Warunjikar with Yogesh Rohira for
the Applicant.

Ms Poornima Kantharia for the Respondent No.1.

Mr Y. S. Shinde APP for the Respondent No.2.

CORAM: V.C. DAGA,J.
DATED: 6TH JULY, 2007.

P.C.:-

1. Heard.

2. Perused application.

3. This is an application essentially for grant of anticipatory bail. The applicant has approached this Court directly without approaching Session Court. I am, therefore, not inclined to consider the prayer for anticipatory bail.

4. At this juncture, it is needless to mention that learned counsel appearing for the applicant vehemently urged that this Court has

a concurrent jurisdiction to entertain the application under Section 438 of the Cr.P.C. as such, this application should be considered on its own merits.

5. Learned counsel for the applicant placed reliance on the following reported judgments.

Jagannath v. State of Maharashtra 1981 Cri.L.J. 1808.(Bombay High Court).

Onkar Nath Agrawal and others v. State, 1976 Cri.L.J. 1142. (Allahabad High Court).

6. Needless to mention that it is the choice of the suitor or applicant to select forum. At the same time, it is the discretion of the High Court either to entertain or not to entertain the application. While exercising discretion, the same has to be exercised judiciously.

7. Having examined the pleadings and averments made in the application, they are absolutely vague. No details or material particulars of the persons alleged to have approached at his residence, on the basis of which apprehension is being entertained are disclosed.

8. In para 7 of the application a sweeping statement is made that two unknown persons styling themselves as officers of the respondent no.2 came to the applicant's residence in his absence. The applicant was not at home. Then one fails to understand, how and from whom this information was received to the applicant, has not been disclosed. The verification to the application is based on personal knowledge. Thus, the statement made in the application is seen in the light of the verification, it does not inspire judicial confidence. Application is as vague as anything could be.

9. The application also does not spell out as to under which section the action is likely to be taken, against him. He is also not sure whether he is seeking bail for the offence charged or alleged under Section 135 (1) (ii) or 135 (1) (i) of the Customs Act. Offence under Section 135 (1)(ii) of the Customs Act is bailable; whereas Section 135(1)(i) is non-bailable. The application appears to have been casually drafted without any material

facts, and particulars.

10. At this juncture, it will not be out of place to mention that the learned counsel for the applicant tried to place reliance on the judgment and order of the learned Single Judge of this Court in Criminal Application No. 5 of 2006 dated 3.1.2006 (unreported) in which learned Single Judge has refused to exercise jurisdiction to grant anticipatory bail since application for bail was made directly to this Court without approaching to the Session Court. Here I may mention that the observations made by learned Single Judge in the above unreported judgment while rejecting application for anticipatory bail hold good even while considering the present application. One does not know how reliance is placed on this order by the learned counsel for the applicant. It does not help him, rather it destroys his case in toto.

11. Under the above circumstances, this Court is not inclined to exercise its jurisdiction. However, it is made clear that if the applicant wants to move Session Court

he may move proper application with proper details.

12. With the aforesaid observations, the application is rejected.

(V.C. DAGA,J.)